



Senate Fiscal Agency  
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BILL ANALYSIS

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House Bills 4414 and 4415 (as passed by the House)  
Sponsor: Representative Robert Gosselin (H.B. 4414)  
Representative David Robertson (H.B. 4415)  
House Committee: Employment Relations, Training and Safety  
Senate Committee: Commerce and Labor

Date Completed: 3-15-05

## **CONTENT**

**The bills would amend the Michigan Employment Security Act to do both of the following:**

- Provide that if an employer transferred assets by any means other than in the ordinary course of trade, the transfer would be a "transfer of business" under circumstances specified in the Act if there were not substantially common ownership or control of the transferor and transferee.**
- Include in the Unemployment Compensation Fund all money collected under Senate Bill 171, including fines, civil penalties, and interest.**

The bills would take effect on July 1, 2005. They are tie-barred to each other and to Senate Bills 171 and 174, which would prohibit and provide sanctions for transferring or acquiring a trade or business for the sole or primary purpose of obtaining a lower contribution rate or reimbursement payment in lieu of contributions required under the Act, a practice known as "SUTA dumping". (SUTA refers to the State Unemployment Tax Act.)

### **House Bill 4414**

Under the Act, if an employer transfers any of the business's assets by any means other than in the ordinary course of trade, the transfer is deemed a "transfer of business" if both of the following apply:

- The transferee is an employer subject to the Act on the transfer date, has become subject to the Act as of the transfer date, or elects to become subject to the Act as of the transfer date.
- The transferee has acquired and used the transferor's trade name or good will, or has continued or, within 12 months after the transfer, resumed all or part of the business of the transferor either in the same establishment or elsewhere.

Under the bill, such a transfer would be a "transfer of business" only if there were not substantially common ownership, management, or control of the transferor and the transferee.

The Act also provides that a transfer is a "transfer of business" if an employer subject to the Act transfers any of the business's assets, by any means other than in the ordinary course of trade, to any transferee or transferees substantially owned or controlled by the same interest or interests that owned or controlled the transferor at the time of the transfer. The bill would retain that provision.

Under the Act, in the case of a transfer of business, the Unemployment Insurance (UI) Agency must assign the transferor's rating account, or a pro rata part of it, to the

transferee. (The bill would refer to experience account, rather than rating account.) The Agency also must transfer a proportionate share of the amount of the total wages subject to contributions under the Act paid by the transferor and properly allocable to the transfer of business. The transferred account is chargeable for all benefit payments based on employment in the business or portion of the business transferred.

### **House Bill 4415**

Under the Michigan Employment Security Act, the Unemployment Compensation Fund is separate from all public money or State funds, and is administered exclusively for the purposes of the Act. The Fund consists of all of the following:

- All contributions and payments in lieu of contributions collected under the Act as well as reimbursement payments by the Federal government for its portion of sharable extended benefits.
- Interest earned on any money in the Fund.
- Any property or securities acquired through the use of money belonging to the Fund, and all earnings of that property or securities.
- Amounts transferred from the Contingent Fund (into which all solvency taxes and all interest on contributions, penalties, and damages collected under the Act are deposited).

The bill would include in the Unemployment Compensation Fund all money collected under Senate Bill 171, including fines, civil penalties, and interest.

Presently, the Fund also contains any other money received by the UI Agency for unemployment compensation, except interest, penalties, and damages collected under the Act. The bill would refer to the "other" provisions of the Act.

MCL 421.22 (H.B. 4414)  
421.26 (H.B. 4415)

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

In order to avoid the loss of Federal administrative funds for the unemployment compensation program, Michigan must comply with the Federal requirements by July 1, 2005. Federal administrative funds for the unemployment insurance program are approximately \$79.1 million in FY 2004-05.

Department of Labor and Economic Growth staff estimate that by prohibiting SUTA dumping, the bills, together with Senate Bills 171 and 174, would increase revenue to the Unemployment Compensation Fund between \$62 million and \$95 million annually. An additional but unknown amount of revenue would be paid to the Fund under the penalty and interest provisions. The Department would incur undetermined additional administrative costs to comply with the investigative and reporting requirements of the bills.

For calendar year 2003, the Unemployment Insurance Trust Fund reported employer contributions of \$1,093,178,466, regular benefits charged to the Fund of \$1,895,239,323, and total funds available for benefits of \$1,106,458,508.

Local governments that elected to change between contributing and reimbursing employer status would experience higher costs under the bills.

Fiscal Analyst: Elizabeth Pratt

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.